demonstrates the very dispute that necessitates a jury trial. Petitioners are in disagreement with substantially all of the factual assertions here made by respondent, either as a matter of accuracy or as a matter of relevance. Without a jury resolution of this dispute, there can be no assurance that the three-year fraud limitation period was or was not tolled by concealment. Under Florida law, petitioners were entitled to just that kind of a jury determination. *Metcalf* v. *Johnson,* 113 So. 2d 864 (Fla. App.).

Moreover, respondent concedes (Opp. Br. 25-26) that "there was documentary evidence [uncovered in 1964 after the 1963 summary judgment herein] of which petitioners were ignorant." Respondent then states, on the expressed assumption that this evidence "was fraudulently concealed and thereby hid a cause of action" (Opp. Br. 26), that the petitioners must have known of the "substance if not the detail" of this new evidence for many years, the matters having been "tendered" to them on numerous occasions. Such a controversial statement cannot overcome the very grave error of the Fifth Circuit in affirming the summary denial of the motion for a new trial based on this new evidence of fraud and concealment—which respondent is willing to assume may have hid a cause of action during the years in question. Whether the petitioners knew or should have known of the substance or the details of these new facts, and whether tenders of the information were actually made long prior to the institution of this suit, are matters that the District Court should have permitted a jury to determine, as Florida law requires.

(6) Finally, respondent ignores completely the significance of that portion of the ruling below that no

federal question was presented by this suit. The square conflict between that ruling and the decision of this Court in *Chaloner* v. *Sherman*, 242 U.S. 455, as detailed in the Petition, pp. 31-32, fully merits the attention of this Court.

CONCLUSION

It is not the intention of the petitioners to burden this Court with the many and irrelevant factual disputes which mark respondent's version of the case. Much of what the respondent states in its supplemental statement of the case (Opp. Br. 1-9) differs substantially from what petitioners believe to be the true and relevant facts of the case. Thus the respondent's effort (Opp. Br. 2-3) to portray the petitioner wife as mentally incompetent is not only irrelevant in the present context but is overcome by the Pennsylvania court's express refusal to find her incompetent to manage her affairs at the time in question. See Petition, p. 7. And the respondent's denial of knowledge of the illegal conspiracy (Opp. Br. 6-9) would be relevant only if and when a jury were permitted to adjudicate the newly discovered evidence indicating that the respondent did in fact know of the conspiracy and of the plan to seize the petitioner wife's property, to have her incarcerated, and to annul her marriage. None of these matters, however, is before this Court at this time.

But these disputed matters, which should be but have not been resolved by a jury, cannot hide the hard and undisputed fact that the respondent bank was not finally discharged as guardian until 1961, less than a year before the institution of this suit. Out of that plain fact emerges the questions which petitioners ask

this Court to review, questions concerning the accuracy of the Fifth Circuit's statement of the applicable Florida limitations law and the assertion of a federal cause of action. Petitioners reiterate that, in the context of a situation where the civil rights and remedies of those charged with being mentally ill are concerned, it is important for this Court to make certain that state law in this respect has been properly interpreted and applied. This is far more than a parochial matter. It is of concern to countless thousands of our citizens.

The deep gulf between the ruling below and the applicable rulings of the Florida courts respecting Florida limitations law justifies the grant of certiorari in this instance.

Respectfully submitted,

CHARLES M. TRAMMELL
1730 K Street, N.W.
Washington, D. C. 20006

EUGENE GRESSMAN
1730 K Street, N.W.
Washington, D. C. 20006

Counsel for Petitioners

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